

**Introduced by Senator Poochigian**

February 9, 2005

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An act to amend Section 1872.83 of, *and to add Section 1870.5 to*, the Insurance Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as amended, Poochigian. Workers' compensation: fraud prevention.

Existing law requires the Insurance Commissioner to ensure that the Bureau of Fraudulent Claims within the Department of Insurance aggressively pursues all reported incidents of probable workers' compensation fraud, as defined. ~~Existing law establishes the Fraud Assessment Commission for specified purposes relating to workers' compensation fraud.~~

~~This bill would allow the Fraud Assessment Commission to hire an executive officer and staff to support its activities.~~

Existing law requires that an annual assessment be imposed on workers' compensation insurers for purposes relating to workers' compensation fraud, and that specified portions of these funds be provided to the Bureau of Fraudulent Claims for enhanced investigative efforts, and to district attorneys for investigatory and prosecutorial purposes.

This bill would *transfer to the Attorney General all authority possessed by the commissioner pursuant to these provisions to investigate or prosecute insurance fraud, or to make grants for the investigation or prosecution of insurance fraud. The bill would specify the process by which district attorneys may apply for grants under these provisions, and would impose certain requirements on the*

~~Insurance Commissioner~~ Attorney General with respect to administering these grants.

~~The bill would delete the references to the Bureau of Fraudulent Claims and replace them with the Fraud Division.~~

*Existing law establishes the Fraud Assessment Commission for specified purposes relating to workers' compensation fraud.*

*This bill would allow the Fraud Assessment Commission to hire an executive officer and staff to support its activities.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1870.5 is added to the Insurance Code,  
2     to read:

3     1870.5. Notwithstanding any other provision of law, all  
4     authority possessed by the commissioner pursuant to this chapter  
5     to investigate or prosecute insurance fraud, or to make grants for  
6     the investigation or prosecution of insurance fraud, is transferred  
7     to the Attorney General. Each reference contained in this chapter  
8     to the "Insurance Commissioner" or the "commissioner" shall  
9     be deemed to refer to the Attorney General, and each reference  
10    to the "Bureau of Fraudulent Claims," the "Fraud Division,"  
11    the "department," or the "Department of Insurance" shall be  
12    deemed to refer to the Department of Justice.

13    ~~SECTION 1.~~

14    SEC. 2. Section 1872.83 of the Insurance Code is amended to  
15    read:

16    1872.83. (a) The commissioner shall ensure that the Fraud  
17    Division of the Department of Insurance aggressively pursues all  
18    reported incidents of probable workers' compensation fraud, as  
19    defined in Sections 11760 and 11880, in subdivision (a) of  
20    Section 1871.4, and in Section 549 of the Penal Code, and  
21    forwards to the appropriate disciplinary body the names, along  
22    with all supporting evidence, of any individuals licensed under  
23    the Business and Professions Code who are suspected of actively  
24    engaging in fraudulent activity. The Fraud Division shall forward  
25    to the Insurance Commissioner or the Director of Industrial  
26    Relations, as appropriate, the name, along with all supporting  
27    evidence, of any insurer, as defined in subdivision (c) of Section

1 1877.1, suspected of actively engaging in the fraudulent denial of  
2 claims.

3 (b) To fund increased investigation and prosecution of  
4 workers' compensation fraud, and of willful failure to secure  
5 payment of workers' compensation, in violation of Section  
6 3700.5 of the Labor Code, there shall be an annual assessment as  
7 follows:

8 (1) The aggregate amount of the assessment shall be  
9 determined by the Fraud Assessment Commission, which is  
10 hereby established. The commission shall be composed of seven  
11 members consisting of two representatives of organized labor,  
12 two representatives of self-insured employers, one representative  
13 of insured employers, one representative of workers'  
14 compensation insurers, and the President of the State  
15 Compensation Insurance Fund, or his or her designee.

16 The Governor shall appoint members representing organized  
17 labor, self-insured employers, insured employers, and insurers.  
18 The term of office of members of the commission shall be four  
19 years, and a member shall hold office until the appointment of a  
20 successor. The President of the State Compensation Insurance  
21 Fund shall be an ex officio, voting member of the commission.  
22 Members of the commission shall receive one hundred dollars  
23 (\$100) for each day of actual attendance at commission meetings  
24 and other official commission business, and shall also receive  
25 their actual and necessary traveling expenses incurred in the  
26 performance of commission duties. Payment of per diem and  
27 travel expenses shall be made from the Workers' Compensation  
28 Fraud Account in the Insurance Fund, established in paragraph  
29 (4), upon appropriation by the Legislature. The commission may  
30 hire an executive officer and staff to support the activities of the  
31 commission. All personnel of the commission shall be under the  
32 supervision of the chair or an executive officer to whom he or  
33 she delegates this responsibility. All personnel shall be appointed  
34 pursuant to the State Civil Service Act (Part 2 (commencing with  
35 Section 18500) of Division 5 of Title 2 of the Government  
36 Code), except for the one exemption allowed by subdivision (e)  
37 of Section 4 of Article VII of the California Constitution.

38 (2) In determining the aggregate amount of the assessment, the  
39 Fraud Assessment Commission shall consider the advice and  
40 recommendations of the Fraud Division and the commissioner.

1 (3) The aggregate amount of the assessment shall be collected  
2 by the Director of Industrial Relations pursuant to Section 62.6 of  
3 the Labor Code. The Fraud Assessment Commission shall  
4 annually advise the Director of Industrial Relations, not later than  
5 March 15, of the aggregate amount to be assessed for the next  
6 fiscal year.

7 (4) The amount collected, together with the fines collected for  
8 violations of the unlawful acts specified in Sections 1871.4,  
9 11760, and 11880, Section 3700.5 of the Labor Code, and  
10 Section 549 of the Penal Code, shall be deposited in the  
11 Workers' Compensation Fraud Account in the Insurance Fund,  
12 which is hereby created, and may be used, upon appropriation by  
13 the Legislature, only for enhanced investigation and prosecution  
14 of workers' compensation fraud and of willful failure to secure  
15 payment of workers' compensation as provided in this section.

16 (c) For each fiscal year, the total amount of revenues derived  
17 from the assessment pursuant to subdivision (b) shall, together  
18 with amounts collected pursuant to fines imposed for unlawful  
19 acts described in Sections 1871.4, 11760, and 11880, Section  
20 3700.5 of the Labor Code, and Section 549 of the Penal Code,  
21 not be less than three million dollars (\$3,000,000). Any funds  
22 appropriated by the Legislature pursuant to subdivision (b) that  
23 are not expended in the fiscal year for which they have been  
24 appropriated, and that have not been allocated under subdivision  
25 (g), shall be applied to satisfy for the immediately following  
26 fiscal year the minimum total amount required by this  
27 subdivision. In no case may that money be transferred to the  
28 General Fund.

29 (d) After incidental expenses, at least 40 percent of the funds  
30 to be used for the purposes of this section shall be provided to the  
31 Fraud Division of the Department of Insurance for enhanced  
32 investigative efforts, and at least 40 percent of the funds shall be  
33 distributed to district attorneys, pursuant to a determination by  
34 the commissioner with the advice and consent of the Fraud  
35 Division and the Fraud Assessment Commission, as to the most  
36 effective distribution of moneys for purposes of the investigation  
37 and prosecution of workers' compensation fraud cases and cases  
38 relating to the willful failure to secure the payment of workers'  
39 compensation. Each district attorney seeking a portion of the  
40 funds shall submit to the commissioner an application setting

1 forth in detail the proposed use of any funds provided. A district  
2 attorney receiving funds pursuant to this subdivision shall submit  
3 an annual report to the commissioner with respect to the success  
4 of his or her efforts. Upon receipt, the commissioner shall  
5 provide copies to the Fraud Division and the Fraud Assessment  
6 Commission of any application, annual report, or other  
7 documents with respect to the allocation of money pursuant to  
8 this subdivision. Both the application for moneys and the  
9 distribution of moneys shall be public documents. Information  
10 submitted to the commissioner pursuant to this section  
11 concerning criminal investigations, whether active or inactive,  
12 shall be confidential.

13 (e) If a district attorney is determined by the commissioner to  
14 be unable or unwilling to investigate and prosecute workers'  
15 compensation fraud claims or claims relating to the willful failure  
16 to secure the payment of workers' compensation, the  
17 commissioner shall discontinue distribution of funds allocated for  
18 that county and may redistribute those funds according to this  
19 subdivision.

20 (1) The commissioner shall promptly determine whether any  
21 other county could assert jurisdiction to prosecute the fraud  
22 claims or claims relating to the willful failure to secure the  
23 payment of workers' compensation that would have been brought  
24 in the nonparticipating county, and if so, the commissioner may  
25 award funds to conduct the prosecutions redirected pursuant to  
26 this subdivision. These funds may be in addition to any other  
27 fraud prosecution funds or claims relating to the willful failure to  
28 secure the payment of workers' compensation prosecution  
29 otherwise awarded under this section. Any district attorney  
30 receiving funds pursuant to this subdivision shall first agree that  
31 the funds shall be used solely for investigating and prosecuting  
32 those cases of workers' compensation fraud or claims relating to  
33 the willful failure to secure the payment of workers'  
34 compensation that are redirected pursuant to this subdivision and  
35 submit an annual report to the commissioner with respect to the  
36 success of the district attorney's efforts. The commissioner shall  
37 keep the Fraud Assessment Commission fully informed of all  
38 reallocations of funds under this paragraph.

39 (2) A grant under this section shall be awarded on the basis of  
40 a single application for a period of three years. Continued

1 funding of a grant shall be contingent upon a grantee's successful  
2 performance, as determined by an annual review by  
3 commissioner. Any redirection of grant funds under this section  
4 shall be made only for good cause.

5 (3) The commissioner shall establish a fair, transparent, and  
6 predictable process for evaluating grant applications, shall  
7 document the rationale for each decision, and shall establish  
8 performance measures to evaluate investigative and prosecutorial  
9 efforts.

10 (f) (1) If the commissioner determines that no district attorney  
11 is willing or able to investigate and prosecute the workers'  
12 compensation fraud claims or claims relating to the willful failure  
13 to secure the payment of workers' compensation arising in the  
14 nonparticipating county, the commissioner, with the advice and  
15 consent of the Fraud Assessment Commission, may award to the  
16 Attorney General some or all of the funds previously awarded to  
17 the nonparticipating county. Before the commissioner may award  
18 any funds, the Attorney General shall submit to the  
19 commissioner an application setting forth in detail his or her  
20 proposed use of any funds provided and agreeing that any funds  
21 awarded shall be used solely for investigating and prosecuting  
22 those cases of workers' compensation fraud or claims relating to  
23 the willful failure to secure the payment of workers'  
24 compensation that are redirected pursuant to this subdivision.  
25 The Attorney General shall submit an annual report to the  
26 commissioner with respect to the success of the fraud prosecution  
27 efforts of his or her office.

28 (2) Neither the Attorney General nor any district attorney shall  
29 be required to relinquish control of any investigation or  
30 prosecution undertaken pursuant to this subdivision unless the  
31 commissioner determines that satisfactory progress is no longer  
32 being made on the case or the case has been abandoned.

33 (3) A county that has become a nonparticipating county due to  
34 the inability or unwillingness of its district attorney to investigate  
35 and prosecute workers' compensation fraud or the willful failure  
36 to secure the payment of workers' compensation shall not  
37 become eligible to receive funding under this section until it has  
38 submitted a new application that meets the requirements of  
39 subdivision (d) and the applicable regulations.

1 (g) If in any fiscal year the Fraud Division does not use all of  
2 the funds made available to it under subdivision (d), any  
3 remaining funds may be distributed to district attorneys pursuant  
4 to a determination by the commissioner in accordance with the  
5 same procedures set forth in subdivision (d).

6 (h) The commissioner shall adopt rules and regulations to  
7 implement this section in accordance with the rulemaking  
8 provisions of the Administrative Procedure Act (Chapter 3.5  
9 (commencing with Section 11340) of Part 1 of Division 3 of Title  
10 2 of the Government Code). Included in the rules and regulations  
11 shall be the criteria for redistributing funds to district attorneys  
12 and the Attorney General. The adoption of the rules and  
13 regulations shall be deemed to be an emergency and necessary  
14 for the immediate preservation of the public peace, health, and  
15 safety, or general welfare.

16 (i) The department shall report on an annual basis to the  
17 Legislature and the Fraud Assessment Commission on the  
18 activities of the Fraud Division and district attorneys supported  
19 by the funds provided by this section.

20 The annual report shall include, but is not limited to, all of the  
21 following information for the department and each district  
22 attorney's office:

- 23 (1) All allocations, distributions, and expenditures of funds.
- 24 (2) The number of search warrants issued.
- 25 (3) The number of arrests and prosecutions, and the aggregate  
26 number of parties involved in each.
- 27 (4) The number of convictions and the names of all convicted  
28 fraud perpetrators.
- 29 (5) The estimated value of all assets frozen, penalties assessed,  
30 and restitutions made for each conviction.
- 31 (6) Any additional items necessary to fully inform the Fraud  
32 Assessment Commission and the Legislature of the  
33 fraud-fighting efforts financed through this section.

34 (j) In order to meet the requirements of subdivision (g), the  
35 department shall submit a biannual information request to those  
36 district attorneys who have applied for and received funding  
37 through the annual assessment process under this section.

38 (k) Assessments levied or collected to fight workers'  
39 compensation fraud and insurance fraud are not taxes. Those  
40 funds are entrusted to the state to fight fraud and the willful

1 failure to secure the payment of workers' compensation by  
2 funding state and local investigation and prosecution efforts.  
3 Accordingly, any funds resulting from assessments, fees,  
4 penalties, fines, restitution, or recovery of costs of investigation  
5 and prosecution deposited in the Insurance Fund shall not be  
6 deemed "unexpended" funds for any purpose and, if remaining in  
7 that account at the end of any fiscal year, shall be applied as  
8 provided in subdivision (f) and to offset or augment subsequent  
9 years' program funding.

10 (l) The Bureau of State Audits shall evaluate the effectiveness  
11 of the efforts of the Fraud Assessment Commission, the Fraud  
12 Division, the Department of Insurance, and the Department of  
13 Industrial Relations, as well as local law enforcement agencies,  
14 including district attorneys, in identifying, investigating, and  
15 prosecuting workers' compensation fraud and the willful failure  
16 to secure payment of workers' compensation. The report shall  
17 specifically identify areas of deficiencies. Included in this report  
18 shall be recommendations on whether the current program  
19 provides the appropriate levels of accountability for those  
20 responsible for the allocation and expenditure of funds raised  
21 from the assessment provided in this section. The Bureau of State  
22 Audits shall submit a report to the Chairperson of the Senate  
23 Committee on Labor and Industrial Relations and the  
24 Chairperson of the Assembly Committee on Insurance on or  
25 before May 1, 2004.